

MEMORANDUM

DATE: October 28, 2002
TO: City and Township Clerks
FROM: Michigan Department of State, Bureau of Elections
SUBJECT: November 5, 2002 General Election

This is the third and final memo in a series of communications provided through the Bureau of Elections to assist with your preparations for the November 5 general election. Information on the following topics is provided:

- I. Plan Now for Successful Recounts!
- II. Handling “Missing” Registrations
- III. Write-in Votes: Final Reminders
- IV. Ballot Security
- V. NVRA Data Collection
- VI. Post-Election CFR Compliance Statement Required of Elected Candidates
- VII. “Improper” Challenges Not Permitted
- VIII. Cell Phones Not Permitted in Absent Voter Counting Boards
- IX. Posting the Ballot Proposal Posters in the Polls

I. Plan Now for Successful Recounts!

While election officials need to be aware of the “tight” races in their area that may result in a recount, all elections should be approached with the view that a recount will be conducted.

A successful recount is a recount where all precincts are fully “recountable”; “unrecountable” precincts erode confidence in the integrity of the elections process and reflect badly on the performance of the election officials involved. The careful observance of the following reminders will help to ensure that if a recount is conducted in your jurisdiction, it will be a successful one. *Remember: A recount is essentially a*

public review of how well the election officials and precinct boards involved have performed their duties!

- Precinct boards must make every effort to ensure that the number of ballots cast in their precinct matches the number of names entered in the poll book to ensure the “recountability” of the precinct after the election. If anything occurs during the course of the day which will affect the precinct’s “balance,” the election inspectors should make an appropriate notation on the remarks page of the poll book. For further information, see “*Accounting for Every Ballot Issued: New Emphasis on an Important Requirement*” in the October 11, 2002 memo distributed through this office.
- All ballot containers used to administer the November 5 general election must have passed the ballot container inspection carried out earlier this year by your local county canvassing board. Containers which do not carry an approval sticker expiring May 31, 2006 cannot be used to administer the election.
- All ballot containers used to store ballots must be properly sealed after the polls close. The seal number(s) must be properly recorded. For further information, see “*Ballot Security*” in this memo.

II. Handling “Missing” Registrations

Every voter who registers to vote prior to the “close of registration” for the election must be extended a full opportunity to participate in the election despite the occurrence of an administrative error or delay in the processing of his or her voter registration application.

An elector whose voter registration record cannot be located on election day can vote if he or she presents a voter registration application receipt validated on or before the “close of registration” for the election at hand. *As a precondition to voting, the elector must complete and submit a new voter registration application.*

If the elector is unable to produce a validated voter registration application receipt, Michigan election law provides that the elector can vote if he or she:

- 1.) has never participated in an election since registering to vote in his or her current city or township of residence;
- 2.) signs an affidavit affirming that he or she submitted a voter registration application through a Secretary of State branch office, a designated voter registration agency, the county clerk or the mail on or before the “close of registration” for the election at hand;

- 3.) provides identification to confirm his or her identity and residence; and
- 4.) completes and submits a new voter registration application.

Two important points merit emphasis: 1.) a voter who is issued a ballot under the affidavit procedure must vote a “challenged” ballot and 2.) the election inspector handling the procedure must contact the clerk’s office to confirm that the voter is not registered to vote in any other precinct in the jurisdiction before issuing a ballot to the voter.

A voter registration application form submitted under the above procedure must be forwarded to the local clerk’s office immediately after the election.

A voter identification card *cannot* be accepted as proof of a voter’s eligibility to vote. If an elector whose voter registration record cannot be located claims to have participated in previous elections conducted in the jurisdiction, the elector’s registration status must be verified before the elector is permitted to vote.

III. Write-in Votes: Final Reminders

- It is important that *all* precinct boards understand the procedures for recording and tallying write-in votes. This is especially true in optical scan and punch card precincts where the duplication of ballots (punch card precincts) and the correction of tabulator tapes (optical scan precincts) is sometimes necessary. A summary of the special handling procedures associated with optical scan and punch card ballots which contain write-in votes is attached to this memo for your reference and use. Note: The attached summary does *not* apply to PBC-2100 punch card voting system.
- Write-in stickers should *not* be used in jurisdictions that use optical scan tabulators as the manufacturers of the equipment advise that the stickers can cause tabulator malfunctions. While the use of a sticker to cast a write-in vote on an optical scan ballot does *not* invalidate the write-in vote, jurisdictions that employ optical scan voting equipment should discourage the use of write-in stickers to forestall tabulator problems. This can be accomplished by 1.) contacting any write-in candidates in your jurisdiction and advising them that the distribution of write-in stickers is discouraged due to the possibility that they may cause tabulator problems and 2.) posting a sign on the precinct board’s table which advises against the use of write-in stickers. The following wording is suggested: “WRITE-IN STICKERS CAN CAUSE TABULATOR MALFUNCTIONS. IF YOU WISH TO CAST A WRITE-IN VOTE, WRITE THE CANDIDATE’S NAME ON THE BALLOT.”
- When processing voters, a member of the precinct board must offer to give instruction on *all* aspects of the voting process *including the procedure for casting write-in votes*.

If a voter states that he or she wishes to only receive instruction on the procedure for casting a write-in vote, the precinct board member handling this task may limit the instruction to the write-in process; otherwise, instruction on *all* aspects of the voting process must be offered to avoid any appearance that the precinct board is promoting write-in candidates. A summary of the procedures for casting a write-in vote on the various voting systems used throughout the state is attached for your reference and use.

- If a voter asks for information on the write-in candidates who are seeking the offices on the ballot, the precinct board must advise the voter to contact the clerk. *The precinct board is not permitted to provide the names of write-in candidates while processing voters or display the names of the write-in candidates inside the polling place.*

IV. **Ballot Security**

County and local recounts requested after the November 5 general election may *not* be conducted until written clearance is received through the Michigan Department of State's Bureau of Elections. *All ballots, voting equipment, programs and other materials placed under security must remain sealed until instruction is received through the Bureau.* A memo on the conduct of county and local recounts will be forwarded to the county clerks throughout the state in late November.

CANVASS DOCUMENTS: The Board of County Canvassers is required to seal all statement of votes forms, tally sheets and poll books in envelopes upon the completion of the canvass. Red paper seals may be used to comply with the security requirement.

PAPER BALLOTS: All paper ballots must be sealed in ballot bags; the ballot bags must then be sealed in approved ballot containers. The serial numbers appearing on the seals used to secure the ballot bag and ballot container must be recorded in the Poll Book, on the statement of votes forms and on the certificates affixed to the ballot bag and ballot container.

PUNCH CARD BALLOTS: All program test materials and punch card ballots must be sealed in approved ballot containers. The serial number appearing on the seal used to secure the ballot container must be recorded in the Poll Book, on the statement of votes forms and on the certificate affixed to the ballot container.

OPTICAL SCAN BALLOTS: All program test materials and optical scan ballots must be sealed in an approved ballot container. If the optical scan ballots are placed in a sealed ballot bag, the ballot bag must be sealed in an approved ballot container. The serial number appearing on the seal used to secure the ballot container must be recorded in the Poll Book, on the statement of votes forms and on the certificate affixed to the ballot container.

- If a two-sided ballot container is used to store optical scan ballots, *both sides must be sealed and both seals must be recorded.* (If one side of the container is permanently sealed, the precinct inspectors do not have to list the permanent seal if the number on the permanent seal is properly documented in the clerk's office.)
- If a tabulator ballot receptacle is used to store optical scan ballots, the top of the receptacle must be sealed with a security lid and any doors which provide access to the receptacle must be sealed *even if the doors can be locked with a key.* All seals must be properly recorded. (A tabulator ballot receptacle cannot be used to store optical scan ballots unless it passed the ballot container inspection carried out earlier this year by your local county canvassing board. Tabulator ballot receptacles which do not carry a ballot container approval sticker expiring May 31, 2006 cannot be used to store optical scan ballots.)
- Programs removed from optical scan tabulators must be sealed in an approved ballot container. Programs cannot be erased or transferred to another electronic medium for extended retention until clearance is received from the Department of State's Bureau of Elections.

DIRECT RECORDING ELECTRONIC SYSTEMS: All program test materials and absent voter ballots must be sealed in approved containers. The serial number appearing on the seal used to secure the ballot container must be recorded in the Poll Book, on the statement of votes forms and on the certificate affixed to the ballot container. Programs (memory cartridges) removed from direct recording electronic systems and programs used to count absent voter ballots must be sealed in an approved ballot container. Programs cannot be erased or transferred to another electronic medium for extended retention until clearance is received from the Department of State's Bureau of Elections.

VOTING MACHINES: All voting machines must be sealed to prevent the entrance button from being operated. The serial number appearing on the seal used to secure the voting machine must be recorded in the Poll Book and on the statement of votes forms.

V. NVRA Data Collection

Rules promulgated by the Federal Election Commission to administer the National Voter Registration Act require the Secretary of State to provide the FEC with a detailed report on Michigan's implementation of the NVRA every two years. The next detailed report required of the Secretary of State is due March 31, 2003. In preparation for the submission of the report, Michigan's city and township clerks will be forwarded a questionnaire on the required data immediately after the November 5 general election. The period covered by the report began on November 8, 2000 (the day after the last November general election) and will end on November 5, 2002 (the date of the upcoming November general election).

Complete information on the registration data which will be requested of all city and township clerks is detailed in the manual entitled, *Implementing Michigan's Voter Registration Laws: A Guide for County and Local Election Officials*. Copies of the manual are available through the Department of State's Bureau of Elections.

VI. Post-Election CFR Compliance Statement Required of Elected Candidates

Public Act 217 of 1999 requires any candidate elected to office on the state, county or local level to file an affidavit *prior to assuming office* which states that at the date the affidavit was executed "all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate's election under the Michigan Campaign Finance Act ... have been filed or paid." The affidavit is *not* required of an elected candidate who 1.) is exempt from the filing requirements of Michigan's Campaign Finance Act 2.) did not receive or expend more than \$1,000.00 during the election cycle or 3.) is elected to an office which is *not* certified on the county or state level. Candidates subject to the filing requirement who are elected to an office certified on the county level must submit the required campaign finance compliance statement to the county clerk; city and township clerks are *not* responsible for receiving the statements. A form developed for distribution to elected candidates who must comply with the new filing requirement is attached ("Post-Election Campaign Finance Compliance Statement"). An elected candidate who is required to file the statement who fails to submit the form is guilty of a misdemeanor punishable by "fine of up to \$500.00 or imprisonment for up to 93 days, or both."

VII. "Improper" Challenges Not Permitted

A challenger is not permitted to challenge a voter's right to vote unless the challenger has *good reason to believe* that the elector is not eligible to vote in the precinct.

Proper challenges: A challenge is proper if it is based on information obtained by the challenger through a reliable source or means. For example, the challenger has obtained information that a particular voter 1.) is not a true resident of the jurisdiction 2.) has not yet attained 18 years of age 3.) is not a United States citizen or 4.) did not register to vote on or before the "close of registration" for the election at hand. A challenger should know the specific individuals he or she intends to challenge *before the polls open on election day*.

Improper challenges: A challenge is improper if it is *not* based on information obtained by the challenger through a reliable source or means. For example, a challenger does not have the right to issue a challenge based on an "impression" that the voter may not be eligible to vote in the precinct due to the voter's manner of dress, inability to read or write English, perceived race or ethnic background or need for assistance with the voting

process. Similarly, a challenger does not have the right to issue a challenge due to any physical or mental disability the voter may have or is perceived to have.

Every effort must be made to ensure that the challenge procedures are properly carried out in the polls as the abuse of the process can have serious consequences including the disenfranchisement of qualified electors, criminal violations and legal challenges over the election results. If challengers are appointed in your jurisdiction, recommended measures for ensuring the proper handling of the challenge process include the following:

- Distribute the instructional booklet, *The Appointment, Rights and Duties of Election Challengers* to the challengers and your precinct board members before the polls open. (A copy of the booklet was enclosed with the memo distributed through this office on October 11, 2002. Additional copies of the booklet are available through the Bureau of Elections.)
- Instruct your precinct board members on what is and what is not a proper challenge and their responsibility for monitoring the challenge process. Emphasize that they should immediately contact you if it appears that improper challenges are being issued.
- Take immediate action anytime it appears that a challenger is abusing the challenge process. A challenger is not permitted to issue challenges indiscriminately or without good cause. Further, a challenger is prohibited from threatening or intimidating voters entering or leaving the polling place, applying to vote, entering a voting station or voting. The precinct chairperson has the authority to expel challengers who abuse the challenge process if deemed necessary.

VIII. Cell Phones Not Permitted in Absent Voter Counting Boards

Election inspectors appointed to serve in absent voter counting boards may not use or be in possession of a cellular phone during the sequestration period. The same policy applies to any challengers or polls watchers appointed to observe absent voter counting boards. The enforcement of this policy is critical to the integrity of the absent voter counting board process.

IX. Posting the Ballot Proposal Posters in the Polls

The ballot proposal posters produced for the November 5 general election were shipped to the county clerks throughout the state on October 24, 2002.

Due to the length of the copy involved, it was necessary to print the four statewide ballot proposals on TWO sheets of paper. (Proposal 02-1 appears on the first sheet; Proposals 02-2, 02-3 and 02-4 appear on the second sheet.)

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When distributing the proposal posters to your precinct boards, be sure that each precinct receives two copies of the first sheet (Proposal 02-1) and two copies of the second sheet (Proposals 02-2, 02-3 and 02-4).

If you have any questions, please do not hesitate to contact the Michigan Department of State's Bureau of Elections at (517) 373-2540.

cc: County Clerks